IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 971 OF 1993

Bhosale Pandurang Hindurao.... Petitioner

versus

Shri Nrusionha Shikshan Prasarak Mandal and others .... Respondent.

ALONGWITH

WRIT PETITION NO. 972 OF 1993

Subhash Dhondiram Chougale ... Petitioner

versus

Shri Nrusionha Shikshan Prasarak Mandal and others .... Respondent.

Mrs. Anita A. Agarwal for the petitioner
Shri A.P.Vanarse AGP for the respondents.

CORAM; A.P. DESHPANDE, J.
DATED; 16TH APRIL, 2007

JUDGMENT;

1. As the facts involved in both the writ petitions are identical and as the questions involved are also same, the petitions are heard together and are being disposed of by this common judgment.

2. The present petitioners were working as Assistant teachers in a school administered by respondent no.1

society at Indoli, Taluka Karad, District Satara. On 3rd October 1988 seven employees working in the school including the present petitioners handed over a letter to the Principal of the school informing that they propose to go on leave in protest against the illtreatment meted out by the members of the managing committee of the society and alleging indecent, rude and arrogant behaviour. The concluding part of the said letter states that the signatories to the letter would resume their duties after the management improves their conduct. From 4-10-1988 the said seven employees remained absent without sanction of leave. The Head Master/Management issued communications dated 4-10-1988, 10-10-1988 and 27-2-1989 directing the employees to resume the duties but the employees did not accede to the request or direction of the respondent no.1 and the absence of the employees was prolonged for more than a year. The respondent no.1 management took a decision to proceed against the protesting employees by holding departmental enquiry on the charge of prolonged unauthorised absence and neglect of duties. It does not need to be emphasised that on account of the prolonged absence of the teachers, the most sufferers would be the students par taking education in the school. The statement of allegations were served on to the petitioners and their reply was sought for. The petitioners did reply

to the show cause notice.

3. According to Rule 36 of the MEPS Rules, which governs the conduct of the enquiry, the enquiry committee is required to be constituted which includes a nominee of the management who is to act as a convenor, the other member of the enquiry committee is required to be chosen from the panel of teachers, who have been conferred State or National Award and the third member is required to be nominated by the employee from amongst the employees. It will thus be seen that the composition of the enquiry committee under 36 of the Rule comprises of a nominee of the management, a teacher on whom State/National Award has been conferred, and a representative of the employee facing enquiry. In the present case the management after nominating two persons viz. management's nominee and the State awardee teacher, called upon the petitioners to nominate their representative on the enquiry committee. It is an admitted position that the management had asked the name of the nominee of the petitioners on the enquiry committee vide letter dated 13-2-1990 and the said letter was received by the petitioners on 15-2-1990. The petitioners informed the Secretary of the management that the petitioners need to be provided security to their life

so also to its nominee. Further request was made by letter dated 26-2-1990 by the petitioners that place of enquiry should not be the school premises or the village concerned, but the enquiry should be held in some school at Satara or at the office of the education officer at Satara. Responding positively to the said communications, respondent no.1 by letter dated 14-3-1990 informed that the apprehension of the petitioners that there is any threat to the life of the petitioners or for that matter to their nominee who has to be nominated on the enquiry committee is ill founded. It was then stated that despite the assurance being given by the Secretary of the society, if the petitioners still apprehend danger to their life in appearing before the enquiry officer they are free to take protection and for the same, the society has no objection. The petitioners were then told that they should not avoid the enquiry and should immediately communicate the name of their nominee on the enquiry committee. Despite the letter dated 14-3-1990 sent by the Secretary of the society urging the petitioner to name their nominee on the enquiry committee and participate in the enquiry, the petitioners have chosen not to nominate their representative on the enquiry committee and they have further chosen not to appear before the enquiry committee though the petitioners were informed the

various dates of hearing. There is no justification for the petitioners not to have participated in the enquiry proceedings or by insisting for change of the place of enquiry either at Satara or in the office of the education officer. The said demand was unjustified and contrary to the relevant rule being Rules 36 and 37 of the Rules. The enquiry is required to be conducted in the school premises. It has come on record that some of the teachers who had absented the school along with the petitioners had deposed against the petitioners.

4. Relying on the exparte enquiry, the enquiry committee concluded that the petitioners are guilty of serious misconduct of unauthorised prolonged absence and negligence of duty and hence recommended punishment of termination. Acting on the report of the enquiry committee, the respondent no.1 terminated the petitioners from service and aggrieved thereby the petitioners filed separate appeals before the School Tribunal under section 9 of the MEPS Act. The tribunal has concluded on facts, on the basis of evidence and material before it and the averments made in the memo of appeal and relyig on documents, that the petitioners were not restrained from entering the school as was tried to be contended before the

tribunal but the petitioners had absented themselves from the school. It would have been possible for the petitioners to bring on record the compelling reasons which prompted the petitioners to stay away from the school for such a long time by participating in the departmental enquiry, but the petitioners have chosen not to participate in the departmental enquiry. There is no justification from their side for the prolonged absence. The tribunal has concluded that the enquiry was just and fair, that adequate opportunity was made available to the petitioners of being heard in the matter, but the petitioners themselves opted not to avail of the opportunity by refusing to participate in the departmental enquiry. The tribunal has not approved the adamant stand taken by the petitioners that the enquiry ought to have been conducted at Satara or in the office of the education officer. The tribunal has then proceeded to record a finding that the enquiry committee was constituted in accordance with the law and adequate opportunity was given to the petitioner to nominate a person on their behalf on the enquiry committee but the petitioners did not avail of the opportunity.

5. Before this court, the learned counsel for the petitioners in the above facts situation raised two

submissions: (1) that the convener of the enquiry committee had bias against the present petitioners and the State award teacher who acted as a member of the enquiry committee being close friend of the Head Master, he too had bias against the petitioner. It is settled position in law that an objection founded on bias need to be taken at the first possible opportunity. In the present case the petitioners did at no point of time before conclusion of the enquiry and submission of the report by the enquiry committee, did raise such an objection. Belatedly raising of an objection that the members of the enquiry committee were biased against the petitioners, for the first time before the tribunal could would be of no use.

6. The next submission is that atmosphere in the school did not inspire any confidence in the petitioner to participate in the enquiry proceedings and hence the request to shift the venue of the enquiry committee ought to have been granted. In the first place, management had assured the petitioner that they need not worry about the safety of their life or to the life of their nominee and had also permitted the petitioners to secure protection if they so desire. The apprehension in the mind of the petitioners that there is threat and danger to their

life cannot be said to be reasonable one. When the rules require the enquiry to be held in the school, the management had not committed any illegality in not shifting the venue of the enquiry. Even otherwise it would not be feasible to hold enquiry in another city.

7. Perused the judgment and order passed by the School tribunal. The same does not call for any interference, as a possible view of matter has been taken. In the result, there is no merit in the petition. The same stands rejected. Rule discharged.

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